



Appeal of Charles K. and Mary J. Deeks

The issue presented is whether appellants have established any error in respondent's proposed assessments.

Appellants, husband and wife, filed joint California personal income-tax returns for 1975 and 1977. On their 1975 return, appellants reported total income of \$26,925, comprised of \$7,355 in wages and \$19,570 in business income. From that amount, appellants deducted \$7,500 for estate preservation expenses as a miscellaneous deduction. On their 1977 return, appellants reported total income of \$19,953, comprised of \$10,478 in wages and \$9,475 in business income, rents and royalties. To reach the \$9,475 figure; appellants reported business gross receipts of \$73,638, less business expenses of \$53,505, which included \$53,405 for professional office management fees. From the remaining business net profit of \$20,133 and the reported rents and royalties of \$294, appellants subtracted \$10,952 as nominee income to the Charles K. Deeks Trust.

The 1977 fiduciary return filed for the Charles K. Deeks Trust reported total trust income in the amount of \$35,825. On March 19, 1979, respondent wrote to **appellants requesting** certain information about the trust. Appellants' response did not **provide the** requested **information** but stated that a federal audit was being conducted and requested that the Franchise Tax Board hold its action and inquiries in abeyance pending the outcome of the federal action.

On **April 13, 1979**, respondent informed appellants that section 19254 of the Revenue and Taxation Code granted it broad powers of examination and that failure or refusal to furnish the, requested information in 'writing would, permit it to impose a penalty equaling 25 percent of the additional tax. Respondent granted appellants an additional ten days to furnish all of the previously requested information. Respondent stated that if the information was not provided within that time, it would issue proposed assessments on the presumption that the trust was invalid, and would assess penalties under section 18683 of the Revenue and Taxation Code for failure to furnish information requested. Appellants made no response to that letter.

On June 1, 1979, respondent issued two proposed assessments. The proposed assessment for 1975 disallowed the deduction appellants had taken as an estate preservation expense because respondent regarded it as a nondeductible personal expense appellants incurred in

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establishing the Charles K. Deeks Trust. The assessment included a 25 percent penalty for failure to furnish information and a 5 percent penalty for negligence. The proposed assessment for 1977 stated that respondent did not recognize the trust for tax purposes and was transferring the income of the trust to appellants' individual return under section 17071 on an assignment of income theory or under sections 17751 through 17792 on the basis that appellants were the owners of a grantor's trust. That proposed assessment disallowed all the deductions appellants had taken for the trust on their individual return, but did transfer to appellants' individual return certain deductions reported on the fiduciary return filed for the trust. The assessment included a 25 percent penalty for failure to furnish information and a 5 percent penalty for negligence,

Appellants protested that they had not provided the information because no formal audit had been conducted wherein appellants and their representative could have met personally with one of respondent's auditors. They stated that if such an audit had been provided, they or their representative would have scheduled an appointment to present the requested materials for audit consideration. Appellants again requested that respondent stay its action until their federal audit was finally resolved.

On September 14, 1981, the United States Tax Court issued its decision in appellants' case, Charles K. Deeks, ¶ 81,501 P-H Memo. T.C. (1981). For 1977, the court disallowed deductions of \$7,500 for the **expense** of establishing the trust, \$53,405 for professional management fees, and \$10,952 for nominee payments to the trust. The court sustained the commissioner's determination that the fees were not deductible but constituted taxable income to appellants. On January 4, 1982, respondent issued notices of action on the proposed assessments which revised the adjustments in accordance with the tax court's opinion. Appellants then filed this appeal.

**Appellant's** position is that they have never been afforded an audit by respondent and that they have facts and receipts which have not been evaluated by auditors of either respondent or the Internal Revenue Service, and that respondent has thus prevented them from exhausting their administrative remedies. Appellants request a competent audit allowing them to present their books and records to demonstrate that the assessments of tax are grossly overstated and blatantly unfair.

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It is well settled that respondent's determination of tax and penalties are presumptively correct, and the taxpayer bears the burden of proving them erroneous. (Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Feb. 6, 1980; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Appellant's unsupported statements that the assessments were in error do not shift the burden of proof to respondent. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980.) Appellants' allegation that they will provide facts and documents which support their position if only respondent or this board will provide the audit hearing procedure and personnel specified by appellants does not constitute a demonstration by them that respondent's determinations are in error. Accordingly, we can only sustain respondent's actions.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Charles K. and Mary **J. Deeks** against proposed assessments of additional personal income tax and penalties in the total amounts of \$425.36 and **\$4,945.06** for the years 1975 and 1977, respectively, be and the same is hereby sustained.

Done at **Sacramento**, California, this 8th day of May, **1984**, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Walter Harvey*</u>	, Member

\*For Kenneth Cory, per Government Code section 7.9